IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.790 OF 2006

Mr. Subhir Dutta. ...Petitioner.
Vs.
Citizen Credit Co-operative Bank Ltd. &Ors. ...Respondents.
....
Mr.K. N. Kore for the Petitioner.
Mr. Gabriel Pillai for Respondent No.1.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.

February 22, 2007.

P.C.

The Petitioner has impugned an order passed by the Divisional Joint Registrar, Co-operative Societies, on 26th October 2005 in pursuance of his appointment as an Arbitrator under Section 84(4) of the Multi State Co-operative Societies Act, 2002. The challenge to the order is confined to the direction contained in clause (c) of the said order which is to the following effect :

> "(c) The Employer M/s. Air India to deduct an amount of Rs.15,000/- p.m. (proportionate portion of the salary) from the salary of Respondent No.5, Mr.Subhir Datta and remit the same monthly to the Applicant."

The ground that has been urged before the Court is that before the

order was passed, the Petitioner was not served with a notice of the proceedings before the Arbitrator. Ground No.3 in the Writ Petition is to the following effect :

> "(iii) The order impugned is an ex-parte order against the Petitioner (Orig. Respondent No.5) as the Notice dated 10.7.2005 appearing at Exhibit '5' alleged to have been served upon the Petitioner was never served upon the Petitioner, consequently the Petitioner is deprived of an opportunity of hearing which against the principles of natural justice."

At the hearing of the petition, Counsel appearing on behalf of the First Respondent has conceded that upon taking inspection of the record before the Divisional Joint Registrar, the First Respondent is unable to establish that the Petitioner was served with the proceedings before the Divisional Joint Registrar. In these circumstances, Counsel appearing on behalf of the First Respondent has on instructions fairly stated before the Court that the direction contained in para 7(c) of the impugned order against the Petitioner may be quashed and set aside and the proceedings may be remitted back to the Divisional Joint Registrar to reconsider the liability of the Petitioner. This suggestion is not opposed. On behalf of the Petitioner it has been submitted that on merits, no case would survive as against the Petitioner since it is the case of

the Petitioner that certain terms and conditions have been already entered into by the Bank with the principal borrower as a result of which, it would not necessary to pursue the matter against the Petitioner. At this stage, it would not be proper for this Court to express any view on the merits of the defence which ought to be urged and considered by the Arbitrator. Hence, the following order:

-(i) In view of the concession made on behalf of the First Respondent, the order dated 26th October 2005 of the Divisional Joint Registrar, Co-operative Societies, is quashed and set aside qua the Petitioner;

-(ii) The proceedings shall stand remitted back to the Divisional Joint Registrar for reconsidering the liability of the Petitioner in the application of the First Respondent as against the Petitioner;

-(iii) All the rights and contentions of the parties including on the merits of the defence are kept open;

-(iv) Counsel appearing on behalf of the Parties have agreed to appear before the Arbitrator for receiving directions on 5th March 2007 at 11 a.m. The Arbitrator is requested to endeavour expeditious disposal of the proceedings on remand, preferably within three months.

The petition is accordingly disposed of.

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